

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
93rd General Assembly  
Regular Session, 2021

As Engrossed: H4/19/21  
**A Bill**

HOUSE BILL 1886

By: Representative Gazaway

### **For An Act To Be Entitled**

AN ACT CONCERNING ACCESS TO MEDICAL RECORDS FOR A  
LEGAL PROCEEDING; CONCERNING FEES CHARGED FOR  
DUPLICATION OF ELECTRONICALLY STORED MEDICAL RECORDS;  
AND FOR OTHER PURPOSES.

### **Subtitle**

CONCERNING ACCESS TO MEDICAL RECORDS FOR  
A LEGAL PROCEEDING; AND CONCERNING FEES  
CHARGED FOR DUPLICATION OF ELECTRONICALLY  
STORED MEDICAL RECORDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 16-46-106 is amended to read as follows:

16-46-106. Access to medical records for legal proceeding -

#### Definitions.

(a)~~(1)~~ In contemplation of, preparation for, or use in any legal proceeding, ~~any a~~ a person who is or has been a patient of a ~~doctor, hospital, ambulance provider, medical healthcare provider, or other medical institution~~ medical provider is entitled to obtain access, personally or by ~~and~~ another person authorized to request the ~~through his or her attorney~~ patient's medical records, to the ~~information in his or her~~ patient's medical records, ~~upon request and with written patient authorization through a~~ written request, and shall be furnished copies of all requested medical records ~~pertaining to his or her case upon the tender of the expense of such~~ copy or copies after paying the relevant expense as described in this ~~section.~~ section.



~~(2)(b)(1)~~ Cost of each photocopy, excluding X-rays, shall not exceed A photocopy of a medical record shall not cost more than fifty cents (50¢) per page for the first twenty-five (25) pages and twenty-five cents (25¢) for each additional page.

(2)(A) A labor charge not exceeding fifteen dollars (\$15.00) may be ~~added~~ charged for each request for medical records under ~~subdivision subsection~~ (a)(1) of this section, and the actual cost of any required postage may also be charged.

~~(3)(B)~~ Provided, however ~~However~~, in the alternative to the labor charge described in subdivision ~~(a)(2)(b)(2)(A)~~ of this section, a reasonable retrieval fee for stored printed or written medical records of a ~~hospital, a physician's office, or an ambulance provider~~ medical provider may be added to the photocopy charges, ~~only~~ described in subdivision (b)(1) of this section if the requested medical records are stored at a location other than the location of the ~~hospital, physician's office, or ambulance provider~~ medical provider.

(C) This subsection does not apply to electronically stored medical records that have not been printed into a physical form or to copies of an X-ray.

(c)(1) If medical records are requested under subsection (a) of this section in an electronic format, the medical provider shall furnish the medical records in an electronic format, including through secure electronic transmission to the extent consistent with federal law.

(2) A medical provider is not required to produce medical records in a specific electronic format under this subsection unless a particular electronic format is required by the Arkansas Rules of Civil Procedure or the court.

(3) Medical records requested in electronic format shall be produced within thirty (30) days after receipt of the request unless a different deadline is established under the Arkansas Rules of Civil Procedure or by the court.

(4) The fee for producing the medical records under this subsection is twenty dollars (\$20.00).

~~(4)~~ Provided, further, this

(5) This section ~~shall~~ does not prohibit reasonable fees for narrative medical reports or medical review when performed by the ~~physician~~

~~or medical institution~~ medical provider subject to the request for medical records under this section, but only if a narrative medical report or medical review is requested by the person or entity requesting the records.

~~(b)(1) If a doctor believes a patient should be denied access to his or her medical records for any reason, the doctor must provide the patient or the patient's guardian or attorney a written determination that disclosure of such information would be detrimental to the individual's health or well-being.~~

~~(2)(A) At such time, the patient or the patient's guardian or attorney may select another doctor in the same type practice as the doctor subject to the request to review such information and determine if disclosure of such information would be detrimental to the patient's health or well-being.~~

~~(B) If the second doctor determines, based upon professional judgment, that disclosure of such information would not be detrimental to the health or well-being of the individual, the medical records shall be released to the patient or the patient's guardian or attorney.~~

~~(3) If the determination is that disclosure of such information would be detrimental, then it either will not be released or the objectionable material will be obscured before release.~~

~~(4) The cost of this review of the patient's record will be borne by the patient or the patient's guardian or attorney.~~

~~(c)(d)(1) Nothing in this section shall~~ This section does not preclude the existing subpoena process; ~~however,~~

(2) However, if a patient or the person authorized to request the patient's medical records is compelled to use the subpoena process in order to obtain access to, or copies of, their own the patient's medical records after reasonable requests have been made and a reasonable time has expired, then the court issuing the subpoena and having jurisdiction over the proceedings shall grant the patient or the person authorized to request the patient's medical records a reasonable attorney's fee plus costs of court against the doctor, hospital, or medical institution medical provider.

~~(d)(e) This section does not apply to the~~ Division of Correction Department of Corrections.

(f)(1) If a request for the patient's own medical records is submitted

by the patient or a person authorized to request the patient's medical records, then access shall be provided according to all requirements of the patient access regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act, as they existed on January 1, 2021, and the requirements of 45 C.F.R. § 164.524, as it existed on January 1, 2021.

(2) The standards set forth in subdivision (f)(1) of this section apply regardless of whether the patient or person authorized to request the patient's medical records requests that the records be sent to:

(A) The patient;

(B) A person authorized to request the patient's medical records;

(C) An attorney; or

(D) Another third party.

(3) If the request under subsection (a) of this section is submitted by a party other than the patient or a person authorized to request the patient's medical records, the request must be accompanied by a written authorization, and this section applies to the request.

(g) As used in this section:

(1) "Medical provider" means a doctor, hospital, ambulance provider, medical healthcare provider, or other medical institution that provides medical care;

(2) "Person authorized to request the patient's medical records" means a person who has authority under Arkansas law to act on behalf of a patient in making decisions related to health care; and

(3)(A) "Photocopy" means a photographic copy of printed or written material in a physical form.

(B) "Photocopy" does not include an electronically stored record that has not been printed into a physical form.

*/s/Gazaway*